



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

Minutes of the May 12, 2004 meeting of the  
Commission on Governmental Ethics and Election Practices  
held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Andrew Ketterer; Hon. James O. Donnelly; Hon. A. Mavourneen Thompson. Staff: Executive Director Jonathan Wayne; Counsel Phyllis Gardiner; Lobbyist Registrar Diana True.

At 10:03 a.m., Chair Ketterer convened the meeting. The Commission considered the following items:

Agenda Item #1 - Ratification of minutes of April 21, 2004 meeting

Ms. Thompson moved, Mr. Donnelly seconded, and the Commission members voted unanimously to adopt the draft minutes of the April 21, 2004 meeting.

Agenda Item #2. Hon. Sean Faircloth/Appeal of Denial of Certification as a Maine Clean Election Act Candidate

Sean Faircloth had submitted an appeal of the Commission staff's decision to deny his request to be certified as a Maine Clean Election Act candidate. At the request of the candidate, the Commission members decided to postpone their consideration of the appeal until the May 26 meeting.

Agenda Item #3 - Glen MacWilliams

The Commission held a hearing on Glen MacWilliams' appeal of the staff decision to deny him certification as a Maine Clean Election Act candidate. The staff had denied his request because it appeared that he had not submitted the Request for Certification form by the deadline of April 15, 2004. Mr. MacWilliams submitted a letter outlining the reasons for his appeal. The candidate stated that on the April 15<sup>th</sup> deadline he came to the Commission office and that the Commission staff had checked to see whether he had submitted all of the required documents. The check-list prepared by the Commission staff indicated that the Request for Certification had been received. Mr. MacWilliams stated that he had never seen the Request for Certification form and that it was not in the packet of forms he had received from the Commission. He stated that his failure to submit the form was due to an oversight by himself and by the Commission staff.

The Commission director explained that the staff denied certification to Mr. MacWilliams because the Request for Certification was a form that was required by the Commission Rules. He explained that the Commission had certified about 295 candidates, and that most candidates had understood which forms were required.

Ms. Thompson asked the Commission staff what would be the long-term effects of granting or denying Mr. MacWilliams' appeal, and what factors the staff uses to waive or not waive the failure to submit required documents. The director stated that the Commission Rules permit the Commission to grant waivers of the seed money requirements, but do not authorize waivers for failing to submit the Request for Certification. The director said that he did not see any long-term negative consequences of letting the four candidates participate in the MCEA, as long as the cases are viewed as exceptional and the Commission staff is left with clear guidance from the Commission that the Request for Certification and Seed Money Report are required by the April 15<sup>th</sup> deadline.

Mr. Donnelly said that he saw a downside of granting certification to the candidates because the Commission Rules require forms that allow the staff to administer the Maine Clean Election Act and that most candidates met the requirements to submit the forms.

Chair Ketterer asked Phyllis Gardiner about the legal standards for granting the appeal. Ms. Gardiner stated that she believed the Commission had greater latitude to grant exceptions to requirements in the Commission Rules as compared to statutory requirements.

Ms. Thompson moved that Mr. MacWilliams be certified as a Maine Clean Election Act candidate. Mr. Donnelly seconded the motion for the purposes of discussion. Ms. Thompson said that she had heard no likely negative results of granting certification to Mr. MacWilliams. She believes that one role of the Commission is to reconsider the decisions of its staff when the staff is constrained by the Commission Rules. Mr. Donnelly stated that he was divided, because while the candidate failed to submit a form required by the Commission Rules, the candidate did submit the other materials on time and the staff apparently had overlooked that the form was missing when Mr. MacWilliams was in the Commission office.

Chair Ketterer stated that he had some of the problems that Mr. Donnelly had. He pointed out that candidates also can submit the required papers early so that missing forms can be detected by the Commission staff before the April 15 deadline, and that the ultimate responsibility for submitting the forms on time rests with the candidate. He stated his belief that the Commission did have the authority to excuse the late filing of forms required by Commission Rules. The members voted unanimously to adopt the motion to grant certification to Glen MacWilliams.

#### Agenda Item #4 - Everett W. McLeod, Sr.

The Commission staff previously denied the request of Everett W. McLeod, Sr. to be certified as a MCEA candidate because he did not submit the Request for Certification

form and the Seed Money Report by April 15. The Commission held a hearing on Mr. McLeod's appeal. The candidate apologized for the oversight of not submitting the two forms. He stated that up until the April 15 deadline he was busy collecting the five-dollar qualifying contributions. When Mr. McLeod received advice from Rep. Roderick Carr that he had to submit a salmon-colored form, he mistakenly believe that Rep. Carr was referring to the candidate registration form which Mr. McLeod had already filed.

Jim Donnelly asked why Mr. McLeod believed that the staff determination should be overturned. The candidate replied that he had taken all of the other steps necessary to be certified, including collecting the fifty contributions, and that he did not understand that the seed money report was required because he had accepted no seed money contributions.

Ms. Thompson moved that Mr. McLeod be certified as a Maine Clean Election Act candidate. Chair Ketterer seconded the motion for purposes of discussion. Ms. Thompson stated that she saw only short-term and long-term positives in allowing Mr. McLeod to participate in the Maine Clean Election Act, and did not see any long-term negative consequences of being flexible in this case.

Mr. Donnelly stated that he was not as open to granting an exception in this case because there were some extenuating circumstances in Mr. MacWilliams' case that were not present in Mr. McLeod's case. He agreed with Ms. Thompson that flexibility in the system is important, and that there were some mitigating factors in the present case, such as confusion about the color of the forms and the candidate running for office for the first time. The Commission members voted on Ms. Thompson's motion, and the vote was unanimous in favor of certifying Mr. McLeod as a Maine Clean Election Act candidate.

#### Agenda Item #5 - Lloyd E. Leighton, Jr.

The Commission staff previously denied the request of Lloyd E. Leighton, Jr. to be certified as a MCEA candidate because he did not submit the Request for Certification form and the Seed Money Report by the April 15 deadline. Mr. Leighton appealed the denial. The candidate stated that he made the mistake of not filing the seed money report, and that he believed it was not required because he hadn't accepted any cash. He said it was a mistake on the part of himself and his secretary, and that he took responsibility for it. In response to questioning from the Commission Counsel, Mr. Leighton acknowledged that he did have the Request for Certification form but did not submit it because of an oversight.

Ms. Thompson moved that Mr. Leighton be certified to run as a Maine Clean Election Act candidate. Mr. Donnelly seconded the motion for purposes of discussion. Ms. Thompson asked the staff how it could better clarify that candidates are required to file the seed money report even if they do not collect any seed money. The director responded that he would see to it that the point would be made explicitly in the 2006 Candidate Guide and that the advice would be given to caucuses and candidates.

Mr. Donnelly stated that he was even less comfortable with granting an exception in this case, because in the earlier cases there was a possibility that Mr. MacWilliams actually had

filed the Request for Certification and that Mr. McLeod was confused about which forms had to be filed based on the color of the forms.

Chair Ketterer and Ms. Thompson voted in favor of the motion to certify Mr. Leighton, and Mr. Donnelly voted against the motion.

Agenda Item #6 - Hon. Rosaire Paradis

Mr. Donnelly moved, Ms. Thompson seconded, and the Commission members voted unanimously to table this agenda item until the Commission's May 26 meeting so that a formal hearing could be held that would include sworn testimony by Rep. Paradis.

Agenda Item #7 - Fundraiser by Portland City Republican Party Committee

Ms. Thompson moved, Mr. Donnelly seconded, and the Commission members voted unanimously to table this agenda item until the Commission's May 26 meeting.

Other Item (Not on Agenda) – Rep. Michael Vaughan

In collecting \$5 qualifying contributions, Rep. Michael Vaughan accepted three checks written on bank accounts with business names. If these checks were not counted as qualifying contributions, Mr. Vaughan would have collected 49 qualifying contributions toward the requirement of collecting 50.

At the request of Commission staff, on April 17 Rep. Vaughan obtained money orders from two of the contributors (Mark Brannon and Robert Libby) who had submitted the business checks. The candidate also submitted a letter from Mr. Brannon clarifying that the funds originally contributed were from his personal funds. Rep. Vaughan described his campaign's efforts to collect the qualifying contributions.

Ms. Thompson moved that Rep. Vaughan be certified as a Maine Clean Election Act candidate. Mr. Donnelly seconded the motion. He noted that Mr. Brannon had submitted a letter confirming that the original contribution had been made from his personal funds and that credit unions generally do not carry corporate accounts. Chair Ketterer stated that he believed it was not unusual for individuals to use one checking account for business and personal expenses, and that it would be unduly harsh to deny certification to Rep. Vaughan. The Commission members encouraged staff to educate candidates in future years on which checks would be acceptable. The Commission members voted unanimously in favor of the motion.

Agenda Item #8 - Use of Maine Clean Election Act Funds for Advertising in Party Publications

The Commission members discussed the appropriateness of using Maine Clean Election Act funds on publications distributed at party events such as conventions and dinners. Chair Ketterer expressed that there is something troubling about using taxpayer funds to support a political party. Mr. Donnelly noted that the question may depend on the content of the advertisement, but that it would be helpful to have a bright-line rule stating whether this type of expenditure is allowed. Ms. Thompson commented that she has difficulty stating that an advertisement is something other than a genuine campaign good or service that would be an appropriate use of MCEA funds under the Commission's Expenditure Guidelines. The Chair called the discussion to a close, and that the discussion provided sufficient guidance regarding the views of the Commission members present.

#### Agenda Item #9 - Question Regarding Use of Maine Clean Election Act Funds

David Kubiak is a Green-Independent candidate for State Senate who proposes to use his MCEA funds to pay for videos, booklets, and pamphlets to publicize his candidacy. He proposes that these would be sold at cost to interested voters to educate voters about how national issues and policies relate to local problems. Mr. Donnelly suggested that the campaign could run afoul of the Maine Clean Election Act because participating campaigns may spend no more than the total amount of public funds received, and that the proposed use of public funds could be interpreted as using public funds for party-building. Ms. Thompson stated that by using the Maine Clean Election Act funds to purchase products that would be sold for additional revenues, the campaign would be recycling the public funds received, and that the purchasers of the products would be making contributions to the campaign.

The Chair recognized Ben Chipman of the Green-Independent Party. He commented that past campaigns had purchased computer equipment such as computers, sold them before election day, and used the proceeds to pay staff or other costs. Ms. Thompson said that this sounded like recycling public funds. Mr. Donnelly proposed that the staff be prepared at the next meeting to speak about the issue.

#### **Request for Waivers of Seed Money Restrictions**

##### Agenda Item #10 - Jane Moriarty

Jane Moriarty, a candidate for the House of Representatives, inadvertently accepted \$10 over the \$500 maximum amount of seed money contributions because of a miscalculation and because she forgot she deposited \$5 of her own funds to open her bank account. Mr. Donnelly moved, Ms. Thompson seconded, and the members voted unanimously to grant a waiver of the seed money restrictions so that she can participate in the Maine Clean Election Act.

##### Agenda Item #11 - Marlee Turner

Marlee Turner, a candidate for the House, accepted \$600 in seed money contributions. Her husband (the campaign treasurer) died on April 4 and had been keeping track of her receipts. Mr. Donnelly moved, Ms. Thompson seconded, and the members voted unanimously to grant a waiver of the seed money restrictions so that she can participate in the Maine Clean Election Act.

##### Agenda Item #12 - Participation in the Maine Clean Election Act by Successful Write-In Candidates

Julie Sawtelle intends to be a write-in candidate for the Senate, District 21. Prior to the meeting, she asked whether she would be permitted to participate in the Maine Clean Election Act if she receives 200 write-in votes for the Senate. The Commission director and counsel explained that the MCEA authorizes the Commission to issue rules regarding vacancies and replacement candidates, but the MCEA was silent on whether successful write-in candidates are entitled to participate in the MCEA after they obtain a line on the general election ballot.

Ben Chipman was recognized by the Chair. He asked that Ms. Sawtelle be permitted to participate in the Maine Clean Election Act if she were to obtain a position on the general election ballot.

Mr. Donnelly asked the Commission Counsel whether Ms. Sawtelle be considered filling a vacancy or a replacement candidate because the Green-Independent party had no candidate on the primary election ballot in the district. The Commission Counsel responded that those terms referred to specific procedures in the Election Law that were different than the scenario posed by Ms. Sawtelle.

Chair Ketterer proposed that Ms. Sawtelle be advised that in the Commission's view the proposed participation would not be unreasonable although it is not explicitly permitted by the statute. If she is on the general election ballot and the Commission did permit her to participate, the dates of the qualifying period would have to be worked out, preferably with the benefit of the candidate making a presentation at a meeting of the Commission.

### **Penalty Determination**

#### Agenda Item #13 - Richard Trahey

Richard Trahey filed five monthly lobbyist report ten days late on March 25, 2004. The Commission members considered a letter from Mr. Trahey requesting a reduction of the statutory penalty of \$500. The staff recommended a penalty of \$250, which reflected a 50% reduction because Mr. Trahey had not previously been late in filing a monthly report. Mr. Donnelly moved, Ms. Thompson seconded, and the members voted unanimously to adopt the staff recommendation of a \$50 penalty.

#### Agenda Item #14 - Personnel Matter

Mr. Donnelly moved, Ms. Thompson seconded, and the Commission members voted unanimously to table this agenda item until the May 26 meeting.

Dated: May \_\_\_, 2004

Respectfully submitted,

Jonathan Wayne  
Executive Director